



Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

MAY 28, 2010

New “Economic Nexus” in Washington State May Impact Financial Institutions Including Out-of-state Banks and Credit Card Issuers

Background

Effective June 1, 2010, Washington State’s new economic nexus standard goes into effect. The economic nexus standard may be met without a physical presence in Washington. Under the new economic nexus standard, income of financial institutions, including banks and credit card issuers located outside of Washington, could become subject to Washington’s business and occupation (B&O) tax on an apportioned basis.

Please forward this information to any of your affiliates that also may be affected by this new legislation.

New legislation

Second Engrossed Substitute Senate Bill 6143, Chapter 23 Laws of 2010 (Section 101) establishes that businesses are no longer required to have a physical presence in Washington to have nexus. Businesses meeting any of the thresholds outlined below have nexus with Washington.

Economic nexus taxable thresholds

Under this new standard, a financial institution, including a bank or card issuer, has nexus with Washington State if in a tax year it has at least one of the following in Washington State:

- It is commercially domiciled in Washington;
- Property – average value exceeding \$50,000,
- Payroll exceeding \$50,000 (including certain third party costs),
- Sales exceeding \$250,000, or
- At least 25% of its worldwide property, payroll, or sales.

Note: For purposes of calculating the property, payroll, and sales thresholds for the 2010 tax year, the entire 2010 calendar year is to be used. Starting June 1, 2010, a business will incur B&O tax only if it establishes nexus with Washington under the new economic nexus standards in 2ESSB 6143. For example, Taxpayer X is an out-of-state business with no physical presence in Washington. In 2010, Taxpayer X has \$100,000 of Washington sales in May, \$100,000 in June, and \$100,000 in July. Taxpayer X establishes nexus with Washington by exceeding the \$250,000 sales threshold and will owe B&O tax only on its Washington sales after June 1, 2010.

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“Trailing” nexus

Once nexus has been established, it will continue:

- As long as the taxpayer continues to meet at least one of the thresholds; and
- For one year after the year in which the taxpayer no longer meets one of the thresholds.

Registering in Washington

Businesses that have nexus under the new standard can obtain a Washington tax registration number and begin reporting B&O tax by visiting our website at **dor.wa.gov/EconomicNexus**.

Affiliates

Each affiliate (legal entity) must determine for itself whether it has nexus with Washington under this new standard. The state of Washington does not allow for determining nexus or tax reporting on a combined entity or unified basis.

Definitions

Property - real property, personal property, loan and credit card receivables, rented property, intangible property, and receivables. It does not include computer software, digital goods, or digital codes. The average value of property is determined by averaging the value of property on January 1 and on December 31.

Payroll - compensation paid to employees and third party representatives providing services in Washington.

Sales - interest, fees, gains from trading securities, dividends, commissions, royalties, and other income. The determination of where a financial institution earns income is done consistent with the Model Multistate Tax Commission's model rule for financial institutions.

New apportionment methodology

This legislation also provides a new single factor apportionment methodology based on sales. The new apportionment calculation will be discussed in detail in upcoming Department rules and/or other publications which will be issued no later than June 1, 2010 and will be available on the Department's website at **dor.wa.gov/EconomicNexus**.

For more information

Visit the Department's website at **dor.wa.gov/EconomicNexus** or contact the Department's Telephone Information Center at 1-800-647-7706.